

16 Am. Jur. 2d Constitutional Law § 1

American Jurisprudence, Second Edition | February 2021 Update

Constitutional Law

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I. Overview of Constitutional Law

A. Nature and Characteristics of Constitutions

§ 1. Definition and nature of "constitution" and "constitutional law"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500, 501

The word "constitution" means a declaration of fundamental laws or principles for the government of a nation or state.¹ A constitution is the fundamental law by which all people of the state are governed;² it is the basic charter of state governance.³ A state constitution receives its force from the express will of the people⁴ and is the embodiment of the will of the people⁵ regarding the limits on governmental power.⁶ The legitimacy of any constitution is derived primarily from the consent of those agreeing to be bound by it.⁷

Where a constitution asserts a certain right or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law.⁸ Whatever the constitution prescribes, the general assembly, and every officer or citizen to whom the mandate is addressed, must do, and whatever it prohibits, the general assembly, and every officer and citizen, must refrain from doing.⁹ The government has broad powers, but the means it uses to achieve its ends must be consistent with the letter and spirit of the constitution.¹⁰ A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way.¹¹ The powers granted under the Constitution are not infinite; the power the Constitution grants, it also restrains.¹² Although a constitution may be either written (as in the case of the United States) or unwritten (as in the case of Great Britain), the word "constitution," as applied to the organization of our federal and state governments, always implies a written document which is understood to have been enacted by the direct action of the people.¹³ A constitution is a fundamental document, which, in recognizing citizens' rights and establishing government, provides essential checks and balances whose complexity is to be neither undervalued nor disregarded.¹⁴

Constitutional law, which deals with the interpretation and construction of constitutions and the application of this fundamental law to statutes and other public acts because of the American governmental system, occupies an extremely important position in the jurisprudence of this country.¹⁵ Constitutional provisions gather meaning from the experience of the people, and courts should expect that modern society will mold and shape constitutional principles into new and useful forms.¹⁶

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Footnotes

- 1 [Marbury v. Madison](#), 5 U.S. 137, 2 L. Ed. 60, 1803 WL 893 (1803); [State ex rel. Stephan v. Finney](#), 254 Kan. 632, 867 P.2d 1034 (1994); [Martin v. Beer Bd. for City of Dickson](#), 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 2 [State ex rel. Workman v. Carmichael](#), 241 W. Va. 105, 819 S.E.2d 251 (2018), cert. denied, 140 S. Ct. 98, 205 L. Ed. 2d 24 (2019) and cert. denied, 140 S. Ct. 106, 205 L. Ed. 2d 24 (2019).
- 3 [Simpson v. Miller](#), 241 Ariz. 341, 387 P.3d 1270 (2017).
- 4 [Gannon v. State](#), 303 Kan. 682, 368 P.3d 1024, 329 Ed. Law Rep. 1090 (2016), subsequent determination, 304 Kan. 490, 372 P.3d 1181, 331 Ed. Law Rep. 1117 (2016), subsequent determination, 305 Kan. 850, 390 P.3d 461, 341 Ed. Law Rep. 446 (2017), subsequent determination, 306 Kan. 1170, 402 P.3d 513, 347 Ed. Law Rep. 1186 (2017), subsequent determination, 308 Kan. 372, 420 P.3d 477, 356 Ed. Law Rep. 443 (2018), subsequent determination, 309 Kan. 1185, 443 P.3d 294, 367 Ed. Law Rep. 1121 (2019).
- 5 [State v. Buckner](#), 437 N.J. Super. 8, 96 A.3d 261 (App. Div. 2014), judgment aff'd on other grounds, 223 N.J. 1, 121 A.3d 290 (2015).
- 6 [State v. Rodriguez](#), 347 Or. 46, 217 P.3d 659 (2009).
- 7 [Naifeh v. State ex rel. Oklahoma Tax Commission](#), 2017 OK 63, 400 P.3d 759 (Okla. 2017), as amended, (Aug. 10, 2017).
- 8 [Dietz v. State of Ark.](#), 709 F. Supp. 902, 53 Ed. Law Rep. 74 (E.D. Ark. 1989); [Shields v. Gerhart](#), 163 Vt. 219, 658 A.2d 924 (1995).
- 9 [State v. Barriga](#), 165 Conn. App. 686, 140 A.3d 292 (2016).
- 10 [Horne v. Department of Agriculture](#), 135 S. Ct. 2419, 192 L. Ed. 2d 388 (2015).
- 11 [Horne v. Department of Agriculture](#), 135 S. Ct. 2419, 192 L. Ed. 2d 388 (2015).
- 12 [United States v. Vaello Madero](#), 356 F. Supp. 3d 208 (D.P.R. 2019).
- 13 [U.S. v. Verdugo-Urquidez](#), 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).
- 14 [In re Bruno](#), 627 Pa. 505, 101 A.3d 635 (2014).
- 15 [Martin v. Beer Bd. for City of Dickson](#), 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 16 [Martin v. Beer Bd. for City of Dickson](#), 908 S.W.2d 941 (Tenn. Ct. App. 1995).

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16 Am. Jur. 2d Constitutional Law § 2

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Constitutional Law

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I. Overview of Constitutional Law

A. Nature and Characteristics of Constitutions

§ 2. Distinction between constitutions and statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 500 to 502

A constitution differs from a statute in that a statute ordinarily provides some details of the subject of which it treats;¹ in contrast, a state constitution sets broad general principles, and its very purpose is to endure for a long time and to meet conditions neither contemplated nor foreseeable at the time of its adoption.² The constitution is the framework of the government containing the general principles upon which the government must function.³ A state constitution receives its force from the express will of the people;⁴ statutes, by contrast, are enactments and rules for the government of civil conduct, promulgated by the legislative authority of a state.⁵ Instead of general principles, a statute provides details of the subject of the statute.⁶

As an expression of the will of the people, a state constitution stands above legislative or judge-made law.⁷ Thus, because constitutions constitute the supreme law, they preempt contrary statutes or rules.⁸ Accordingly, the people's constitutional standards must always prevail over the legislature's statutory standards, should the latter be lower.⁹ Where a constitution speaks plainly on a particular matter, it must be given force and effect as the paramount law,¹⁰ and where a statute or other rule and a constitutional provision are in conflict, the constitutional provision must prevail.¹¹

Observation:

There is authority that a constitution is but a higher form of statutory law, so that, for example, the state constitution is looked to where a court is searching for statutory law on a subject, and there is no relevant "statute" per se.¹² In any event, both constitutional and statutory principles should be liberally construed to further the goal of allowing the people to express their will.¹³

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Footnotes

- 1 [Kraus v. City of Cleveland](#), 42 Ohio Op. 490, 58 Ohio L. Abs. 353, 94 N.E.2d 814 (C.P. 1950), decree aff'd on other grounds by, 89 Ohio App. 504, 46 Ohio Op. 132, 58 Ohio L. Abs. 360, 96 N.E.2d 314 (8th Dist. Cuyahoga County 1950).
- 2 [Planned Parenthood of the Heartland v. Reynolds ex rel. State](#), 915 N.W.2d 206 (Iowa 2018).
- 3 [Johns v. May](#), 402 So. 2d 1166 (Fla. 1981).
- 4 § 1.
- 5 [Van Wingerden v. Lafayette Tp.](#), 15 N.J. Tax 475, 1996 WL 267339 (1996), rev'd on other grounds, 303 N.J. Super. 614, 697 A.2d 565 (App. Div. 1997).
- 6 [State ex rel. Stephan v. Finney](#), 254 Kan. 632, 867 P.2d 1034 (1994).
- 7 [Zullo v. State](#), 2019 VT 1, 205 A.3d 466 (Vt. 2019).
- 8 [State v. Bolin](#), 643 S.W.2d 806 (Mo. 1983); [Becky v. Butte-Silver Bow School Dist. No. 1](#), 274 Mont. 131, 906 P.2d 193, 105 Ed. Law Rep. 292 (1995).
- 9 [Gannon v. State](#), 298 Kan. 1107, 319 P.3d 1196, 302 Ed. Law Rep. 377 (2014).
- 10 [Bassett v. Newton](#), 658 So. 2d 398 (Ala. 1995); [Playboy Enterprises, Inc. v. Superior Court](#), 154 Cal. App. 3d 14, 201 Cal. Rptr. 207 (2d Dist. 1984).
- 11 [Passarelli v. Schoettler](#), 742 P.2d 867 (Colo. 1987); [King v. Com., State Employees' Retirement Bd.](#), 129 Pa. Commw. 444, 566 A.2d 323 (1989), judgment rev'd on other grounds, 530 Pa. 481, 610 A.2d 15 (1992).
- 12 [Bower v. Big Horn Canal Ass'n](#), 77 Wyo. 80, 307 P.2d 593 (1957).
- 13 [Alaskans for Legislative Reform v. State](#), 887 P.2d 960 (Alaska 1994).

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16 Am. Jur. 2d Constitutional Law § 3

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I. Overview of Constitutional Law

A. Nature and Characteristics of Constitutions

§ 3. Characteristics of constitutions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500 to 502

The term "constitution" implies an instrument of a permanent¹ and abiding nature.² However, a constitution is intended not merely to meet current conditions.³ A constitution is intended to endure for ages to come, and must adapt itself to a future that can only be seen dimly, if at all,⁴ a constitution is an instrument of progress, intended to stand for a great length of time.⁵ The United States Constitution is said to be a law for the rulers and the people, equally in war and in peace, and to cover with its shield of protection all classes of persons at all times and under all circumstances.⁶

Although the permanent nature of a written constitution may at times seem to stand in the way of progress, its stability is intended to protect the people from frequent and violent fluctuations of public opinion⁷ since the State and Federal Constitutions are limitations on the power of the people as against the impulses of mere majorities.⁸ However, a constitution is not so rigid that it always mandates the same outcome even when its principles operate on a new set of facts that were previously unknown.⁹

Because it is recognized that the framers of a constitution cannot anticipate conditions which may arise thereafter in the progress of the nation¹⁰ or establish all the law which from time to time may be necessary to conform to the changing conditions of a community,¹¹ constitutions traditionally do not deal in details but enunciate the general principles and general directions which are intended to apply to all new facts which may come into being and which may be brought within these general principles or directions.¹²

As a general proposition, the United States Constitution does not tolerate pretext that covers up unconstitutional motives.¹³

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Footnotes

- 1 [Houston County v. Martin](#), 232 Ala. 511, 169 So. 13 (1936).
- 2 [McFadden v. Jordan](#), 32 Cal. 2d 330, 196 P.2d 787 (1948).
- 3 [The Legal Tender Cases](#), 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884); [Legal Tender Cases](#), 79 U.S. 457, 20 L. Ed. 287, 1870 WL 12742 (1870); [Flaska v. State](#), 1946-NMSC-035, 51 N.M. 13, 177 P.2d 174 (1946).
- 4 [N.L.R.B. v. Noel Canning](#), 573 U.S. 513, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014).
- 5 [Doe v. Hartford Roman Catholic Diocesan Corp.](#), 317 Conn. 357, 119 A.3d 462 (2015).
- 6 [Kennedy v. Mendoza-Martinez](#), 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963).
- 7 [Ives v. South Buffalo Ry. Co.](#), 201 N.Y. 271, 94 N.E. 431 (1911).
- 8 [Duncan v. McCall](#), 139 U.S. 449, 11 S. Ct. 573, 35 L. Ed. 219 (1891).
- 9 [Kitchen v. Herbert](#), 961 F. Supp. 2d 1181 (D. Utah 2013), judgment *aff'd* on other grounds, 755 F.3d 1193 (10th Cir. 2014).
- 10 [Bank of U.S. v. Deveaux](#), 9 U.S. 61, 3 L. Ed. 38, 1809 WL 1665 (1809) (overruled in part on other grounds by, [Louisville, C. & C.R. Co. v. Letson](#), 43 U.S. 497, 2 How. 497, 11 L. Ed. 353, 1844 WL 5963 (1844)).
- 11 [Moose v. Board of Com'rs of Alexander County](#), 172 N.C. 419, 90 S.E. 441 (1916).
- 12 [The Legal Tender Cases](#), 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884); [Reilly v. Ozzard](#), 33 N.J. 529, 166 A.2d 360, 89 A.L.R.2d 612 (1960); [State v. Senzarino](#), 10 Ohio Misc. 241, 39 Ohio Op. 2d 383, 224 N.E.2d 389 (C.P. 1967).
- 13 [Whole Woman's Health Alliance v. Hill](#), 937 F.3d 864 (7th Cir. 2019).

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I. Overview of Constitutional Law

A. Nature and Characteristics of Constitutions

§ 4. Functions or purposes of constitutions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500, 501

The purpose of a constitution is to assign to the different departments their respective powers and duties and establish certain fixed first principles on which the government is founded.¹ The United States Constitution is a primer of fundamental principles for the conduct of a developing federal system rather than a manual of technical rules.² The purpose of the United States Constitution was to take government "off the backs" of the people.³ Furthermore, the idea of the United States Constitution was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts.⁴ Also, removing state trade barriers was a principal reason for the adoption of the United States Constitution.⁵ The United States Constitution does not exist to guarantee efficiency; it exists to guarantee individual liberty.⁶ Thus, one of the primary functions of a constitution is to protect the people against arbitrary actions by their own government⁷ or by the courts thereof.⁸

The most important purpose of a state constitution is to furnish the basis for the government it establishes, that is, to prescribe the permanent framework of the system of government.⁹ The purpose of a state's written constitution is to define and limit the powers of government and secure the rights of the people.¹⁰ It is customary for constitutions to prescribe and limit the powers of the government¹¹ and thereby to operate as bulwarks of liberty for the protection of private rights.¹² Public policy is the cornerstone and foundation of all constitutions.¹³ However, although public policy on a given subject may be determined by the constitution itself,¹⁴ public policy considerations cannot override constitutional mandates.¹⁵

Footnotes

- 1 M'Culloch v. State, 17 U.S. 316, 4 L. Ed. 579, 1819 WL 2135 (1819).
- 2 Pearson v. Northeast Airlines, Inc., 309 F.2d 553, 92 A.L.R.2d 1162 (2d Cir. 1962).
- 3 Schneider v. Smith, 390 U.S. 17, 88 S. Ct. 682, 19 L. Ed. 2d 799 (1968).
- 4 Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).
- 5 Tennessee Wine and Spirits Retailers Association v. Thomas, 139 S. Ct. 2449, 204 L. Ed. 2d 801 (2019).
- 6 Bradshaw v. Berryhill, 372 F. Supp. 3d 349 (E.D. N.C. 2019).
- 7 U.S. v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).
- 8 Clark v. Dallas Independent School Dist., 701 F. Supp. 594, 51 Ed. Law Rep. 127 (N.D. Tex. 1988).
- 9 Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).
- 10 City of Cleveland v. State, 157 Ohio St. 3d 330, 2019-Ohio-3820, 136 N.E.3d 466 (2019).
- 11 Tibbetts v. Olson, 91 Fla. 824, 108 So. 679 (1926).
- 12 DuPont v. DuPont, 32 Del. Ch. 413, 85 A.2d 724 (1951); Getzen v. Sumter County, 89 Fla. 45, 103 So. 104 (1925); State v. Arregui, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).
- 13 Dennis v. Kline, 120 So. 3d 11 (Fla. 4th DCA 2013), clarification granted, 134 So. 3d 1051 (Fla. 4th DCA 2013).
- 14 State ex rel. Markovic v. Litscher, 2018 WI App 44, 383 Wis. 2d 576, 916 N.W.2d 202 (Ct. App. 2018), review denied, 2019 WI 8, 385 Wis. 2d 208, 923 N.W.2d 163 (2018) and review denied, 2019 WI 8, 385 Wis. 2d 207, 923 N.W.2d 162 (2018).
- 15 Ex parte Bentley, 116 So. 3d 201 (Ala. 2012).

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16 Am. Jur. 2d Constitutional Law I B Refs.

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I. Overview of Constitutional Law

B. Theoretical Basis of American Constitutional Law

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Research References

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I. Overview of Constitutional Law

B. Theoretical Basis of American Constitutional Law

§ 5. Theoretical basis of American constitutional law, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500

The United States is a constitutional democracy.¹ The constitutional form of government as it exists in the United States is based on the fundamental conception of a supreme law, expressed in written form in the United States Constitution.²

Constitutional government by the people represents the greatest and grandest struggles of humanity for its betterment and in its accomplishment marks the uttermost political accomplishment of the human race.³ The limitations imposed by the American system of constitutional law on the action of the governments, both state and national, are deemed to be essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions.⁴ In the United States, the right of sovereignty is vested in the people⁵ and is exercised through the joint action of the federal and state governments.⁶

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Footnotes

- 1 [Smith v. Allwright](#), 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, 151 A.L.R. 1110 (1944).
- 2 [U.S. Const. Art. VI, cl. 2.](#)
- 3 [State v. Superior Court of King County](#), 60 Wash. 370, 111 P. 233 (1910).
- 4 [Hurtado v. People of State of Cal.](#), 110 U.S. 516, 4 S. Ct. 111, 28 L. Ed. 232 (1884).
- 5 [First Trust Co. of Lincoln v. Smith](#), 134 Neb. 84, 277 N.W. 762 (1938).

6 [State v. Shumaker](#), 200 Ind. 716, 164 N.E. 408, 63 A.L.R. 218 (1928); [Bignell v. Cummins](#), 69 Mont. 294, 222 P. 797, 36 A.L.R. 634 (1923); [State v. Kohler](#), 200 Wis. 518, 228 N.W. 895, 69 A.L.R. 348 (1930).

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16 Am. Jur. 2d Constitutional Law § 6

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I. Overview of Constitutional Law

B. Theoretical Basis of American Constitutional Law

§ 6. Effect of British constitutional law theory on American constitutional law

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500

A.L.R. Library

[Executive privilege with respect to presidential papers and recordings, 19 A.L.R. Fed. 472](#)

Although there can be no doubt that the United States Constitution is derived in many, if not most, respects from the British unwritten constitution, the English Declaration of Rights of 1689,¹ and the English common law,² those who pay great homage to the English common law and its constitutional system sometimes fail to recognize that the essential difference between the English and American Constitutions is not that the English Constitution is unwritten and the American Constitution is written but that the English system is founded on the concept of parliamentary supremacy,³ whereas the American constitutional theory is founded on the concept that sovereignty itself resides with the people.⁴ Where the people are sovereign, their conception of their constitution exists apart from and above any transient legislative enactments.⁵

According to the theory of the English Constitution, absolute despotic power must reside somewhere in all governments, and in Britain, this power is entrusted to Parliament.⁶ The power of the British Parliament is so transcendent that it cannot be confined either for causes or persons within any bounds.⁷ This principle of the omnipotence of Parliament, however, has not been applied

to legislative bodies in America.⁸ Thus, it is recognized that the Congress of the United States as a legislative body is not vested with judicial powers, as is the British Parliament.⁹

Observation:

The right of the United States Senate to try all federal impeachment cases is nonetheless somewhat reminiscent of the judicial power of the English House of Lords.¹⁰

In the United States, the Congress and all of its members, as well as the President of the United States,¹¹ all state¹² and federal officials, and all state and federal courts and judges¹³ are as bound by the United States Constitution as are ordinary citizens.

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Footnotes

- 1 [Harmelin v. Michigan](#), 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (there is no doubt that the English Declaration of Rights of 1689 is the antecedent of our constitutional text).
- 2 [Harmelin v. Michigan](#), 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991); [Gregory v. Ashcroft](#), 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).
- 3 [U.S. v. Winstar Corp.](#), 518 U.S. 839, 116 S. Ct. 2432, 135 L. Ed. 2d 964 (1996).
- 4 [In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions](#), 132 So. 3d 786 (Fla. 2014); [State v. LaFrance](#), 124 N.H. 171, 471 A.2d 340 (1983); [Martin v. Beer Bd. for City of Dickson](#), 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 5 [Van Wingerden v. Lafayette Tp.](#), 15 N.J. Tax 475, 1996 WL 267339 (1996), rev'd on other grounds, 303 N.J. Super. 614, 697 A.2d 565 (App. Div. 1997).
- 6 [Pelzer, Rodgers & Co. v. Campbell & Co.](#), 15 S.C. 581, 1881 WL 5930 (1881).
- 7 [Davis v. State](#), 68 Ala. 58, 1880 WL 1380 (1880).
- 8 [State ex rel. Star Pub. Co. v. Associated Press](#), 159 Mo. 410, 60 S.W. 91 (1900).
In drafting the Constitution, the Framers were not seeking to replicate in America the government of England; indeed, they set their plan of government out in writing in part to make clear the ways in which it was different from the one it replaced. [Loving v. U.S.](#), 517 U.S. 748, 116 S. Ct. 1737, 135 L. Ed. 2d 36 (1996).
- 9 [In re Christensen's Estate](#), 17 Utah 412, 53 P. 1003 (1898).
- 10 [Nixon v. U.S.](#), 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993).
- 11 [U.S. v. Nixon](#), 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).
- 12 [Passarelli v. Schoettler](#), 742 P.2d 867 (Colo. 1987).
- 13 [Clark v. Dallas Independent School Dist.](#), 701 F. Supp. 594, 51 Ed. Law Rep. 127 (N.D. Tex. 1988).

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§ 7. Preconstitution national documents: Declaration of Independence; Northwest Ordinance; Articles of Confederation

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500

Treatises and Practice Aids

Constitutional Law Deskbook: Individual Rights § 1:2 (2d ed.) (Articles of Confederation)

While statements of principles contained in the Declaration of Independence do not have the force of organic law¹ and therefore cannot be made the basis of any judicial decision as to the limits of rights and duties, yet it is always safe to read the letter of the United States Constitution in the spirit of the Declaration of Independence.² The courts have sometimes referred to the Declaration in determining constitutional questions.³

On July 13, 1787—two years before the Constitution of the United States was adopted—Congress enacted the Northwest Ordinance.⁴ Captioned "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio," this landmark legislation—which was to have a profoundly important effect on the subsequent development of both state and national law—was the fundamental instrument of government for an area covering more than a quarter-million square miles.⁵ The territory to which the ordinance applied included all of present-day Michigan, Indiana, Illinois, Wisconsin, and Ohio and part of Minnesota.⁶ The federal courts have generally held that the Ordinance was superseded by the adoption of the Constitution

of the United States⁷ on the ground that the Constitution places all the states of the Union on an equal basis which would not be the case if the Ordinance continued to be in force after the adoption of the organic law.⁸ Even after the adoption of the Constitution, however, some of the provisions of the Ordinance were continued in force by acts of Congress during the period of the territorial government of the Northwest Territory.⁹

In both the federal courts and those of the states created out of the Northwest Territory, the doctrine that the Northwest Ordinance has been superseded by the state constitution when a new state has been admitted to the Union is adhered to, and no effect is given to that Ordinance except insofar as its principles may have been embodied in the state constitution.¹⁰

Following the Revolutionary War, the Articles of Confederation were drafted in 1777 and submitted by the Continental Congress to the state legislatures for approval, but they were not approved by all the states until 1781.¹¹ Thus, the states had joined together under the Articles of Confederation. In that system, the states retained most of their sovereignty, like independent nations bound together only by treaties.¹² The newly independent states did not favor a centralized executive authority, and the government ultimately created by the Articles of Confederation amounted to little more than a loose confederation of states that derived its authority from acceptance of the principles of the confederation by the state legislatures through ratification. The articles created a government with a single branch—a Congress with members appointed by the state legislatures.¹³ The Articles of Confederation are no longer in effect, of course, having been superseded by the Constitution of the United States in 1789.¹⁴

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Footnotes

- 1 [Filan v. Martin](#), 38 Wash. App. 91, 684 P.2d 769 (Div. 3 1984).
- 2 [Gulf, C. & S.F. Ry. Co. v. Ellis](#), 165 U.S. 150, 17 S. Ct. 255, 41 L. Ed. 666 (1897); [McKinster v. Sager](#), 163 Ind. 671, 72 N.E. 854 (1904).
- 3 [Gulf, C. & S.F. Ry. Co. v. Ellis](#), 165 U.S. 150, 17 S. Ct. 255, 41 L. Ed. 666 (1897); [American Federation of Labor v. Buck's Stove & Range Co.](#), 33 App. D.C. 83, 32 L.R.A.N.S. 748, 1909 WL 21547 (App. D.C. 1909).
- 4 [State of Mich. v. U.S.](#), 40 F.3d 817, 95 Ed. Law Rep. 846, 1994 FED App. 0374P (6th Cir. 1994).
- 5 [State of Mich. v. U.S.](#), 40 F.3d 817, 95 Ed. Law Rep. 846, 1994 FED App. 0374P (6th Cir. 1994).
- 6 [State of Mich. v. U.S.](#), 40 F.3d 817, 95 Ed. Law Rep. 846, 1994 FED App. 0374P (6th Cir. 1994).
- 7 [Chapin v. Fye](#), 179 U.S. 127, 21 S. Ct. 71, 45 L. Ed. 119 (1900).
- 8 [Sands v. Manistee River Imp. Co.](#), 123 U.S. 288, 8 S. Ct. 113, 31 L. Ed. 149 (1887); [Huse v. Glover](#), 119 U.S. 543, 7 S. Ct. 313, 30 L. Ed. 487 (1886); [Cardwell v. American River Bridge Co.](#), 113 U.S. 205, 5 S. Ct. 423, 28 L. Ed. 959 (1885).
- 9 [Strader v. Graham](#), 51 U.S. 82, 10 How. 82, 13 L. Ed. 337, 1850 WL 6936 (1850).
- 10 [Hawkins v. Bleakly](#), 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917) (Iowa); [Sands v. Manistee River Imp. Co.](#), 123 U.S. 288, 8 S. Ct. 113, 31 L. Ed. 149 (1887) (Michigan); [Huse v. Glover](#), 119 U.S. 543, 7 S. Ct. 313, 30 L. Ed. 487 (1886) (Illinois); [State ex rel. Donahey v. Edmondson](#), 89 Ohio St. 93, 105 N.E. 269 (1913).
- 11 [Clinton](#), *A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891 (May 1990).
- 12 [U.S. Term Limits, Inc. v. Thornton](#), 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).
- 13 [Clinton](#), *A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891 (May 1990).
- 14 [Halajian v. D & B Towing](#), 209 Cal. App. 4th 1, 146 Cal. Rptr. 3d 646 (5th Dist. 2012).

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§ 8. Purpose, application, and effect of United States Constitution

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500, 501

Treatises and Practice Aids

Constitutional Law Deskbook: Individual Rights § 1:6 (2d ed.) (Constitution of the United States of America)

The several states were in existence as separate sovereignties under the Articles of Confederation¹ prior to the adoption of the Constitution of the United States.² The Constitution brought into being a nation and a closer union rather than a league of separate states.³ The Constitution was framed upon the theory that the peoples of the several states must sink or swim together and that in the long run, prosperity and salvation are in union and not division.⁴

Although providing for the common defense is one of the purposes of the Federal Constitution,⁵ the Constitution was also intended to protect the people of the United States against arbitrary action by their own government.⁶ It was designed for the common and equal benefit of all the people of the United States,⁷ as well as to create a national economic union.⁸

The principal features of the American system of government established by the United States Constitution include representative government,⁹ dual government involving both state and federal aspects,¹⁰ the securing of individual rights

and privileges through constitutional restrictions,¹¹ and a separation of powers among the legislative, executive, and judicial branches of either government, as well as between the governments themselves.¹²

The Constitution of the United States was ordained and established not by the states in their sovereign capacities but, as the Preamble to the Constitution declares, by the people of the United States¹³ and was adopted as their voluntary act for their own protection.¹⁴ It was particularly intended to affect individuals rather than states.¹⁵

The provisions of the United States Constitution must be given full force and effect throughout the Union¹⁶ because it is the supreme law of the land.¹⁷ Thus, the Federal Constitution is in reality a part of the constitution of every state and may be so regarded in determining the validity of legislative acts.¹⁸ It operates alike on all the states¹⁹ and the District of Columbia,²⁰ and, by statute, Congress has also extended specific provisions of the United States Constitution to Guam,²¹ the Virgin Islands,²² and Puerto Rico.²³

Observation:

The Commonwealth of Puerto Rico continues to be a political subdivision of the United States, and federal statutes using the term "territory" may still be applicable to it.²⁴

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Footnotes

- 1 As to history of the Articles of Confederation, see § 7.
- 2 [Blatchford v. Native Village of Noatak and Circle Village](#), 501 U.S. 775, 111 S. Ct. 2578, 115 L. Ed. 2d 686 (1991).
- 3 [U.S. Term Limits, Inc. v. Thornton](#), 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).
- 4 [West Lynn Creamery, Inc. v. Healy](#), 512 U.S. 186, 114 S. Ct. 2205, 129 L. Ed. 2d 157 (1994).
- 5 [Perpich v. Department of Defense](#), 496 U.S. 334, 110 S. Ct. 2418, 110 L. Ed. 2d 312 (1990).
- 6 [U.S. v. Verdugo-Urquidez](#), 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).
- 7 [Martin v. Hunter's Lessee](#), 14 U.S. 304, 4 L. Ed. 97, 1816 WL 1721 (1816).
- 8 [Baker v. Maclay Properties Co.](#), 648 So. 2d 888 (La. 1995).
- 9 [Ex parte Anderson](#), 134 Cal. 69, 66 P. 194 (1901); [Hobart v. Butte County Sup'rs](#), 17 Cal. 23, 1860 WL 994 (1860).
- 10 §§ 224 to 233.
- 11 §§ 400 to 688.
- 12 §§ 234 to 330.
- 13 [Downes v. Bidwell](#), 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).
- 14 [Ableman v. Booth](#), 62 U.S. 506, 21 How. 506, 16 L. Ed. 169, 1858 WL 9351 (1858); [Herman v. Phalen](#), 55 U.S. 79, 14 How. 79, 14 L. Ed. 334, 1852 WL 6786 (1852).
- 15 [New York v. U.S.](#), 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

- 16 King v. Mullins, 171 U.S. 404, 18 S. Ct. 925, 43 L. Ed. 214 (1898).
17 Camp v. Kenney, 673 So. 2d 436 (Ala. Civ. App. 1995); Baker v. Maclay Properties Co., 648 So. 2d 888
(La. 1995); Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).
As to the supremacy of the U.S. Constitution, see §§ 55 to 60.
18 State v. Conlon, 65 Conn. 478, 33 A. 519 (1895).
19 Groves v. Slaughter, 40 U.S. 449, 10 L. Ed. 800, 1841 WL 5033 (1841).
20 Pernell v. Southall Realty, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198 (1974).
21 48 U.S.C.A. § 1421b(u).
22 48 U.S.C.A. § 1561.
23 48 U.S.C.A. § 737.
24 Am. Jur. 2d, States, Territories, and Dependencies § 149.

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§ 9. Purpose, application, and effect of state constitutions

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Treatises and Practice Aids

Constitutional Law Deskbook: Individual Rights § 1:23 (2d ed.) (State constitutions)

Under the American system, each state was left free to establish a constitution for itself, and in that constitution to provide such limitations and restrictions on the powers of its particular government as its judgment might dictate.¹ A state constitution and the statutes of the state are to be taken together as making one body of law.² However, as an expression of the will of the people, a state constitution stands above legislative or judge-made law,³ inasmuch as the state's constitution is the supreme, paramount law of the state⁴ and is second in that state only to the United States Constitution in importance and precedence.⁵

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Footnotes

- ¹ [North Missouri R. Co. v. Maguire](#), 49 Mo. 490, 1872 WL 104 (1872), *aff'd* on other grounds, 87 U.S. 46, 22 L. Ed. 287, 1873 WL 15878 (1873).
- ² [Whitman v. National Bank of Oxford](#), 176 U.S. 559, 20 S. Ct. 477, 44 L. Ed. 587 (1900).

3 § 2.
4 § 61.
5 Dorgan v. Pima County, 131 Ariz. 491, 642 P.2d 488 (Ct. App. Div. 2 1982).

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